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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SAN  
DIEGO GAS & ELECTRIC COMPANY  
(U902E) for a Permit to Construct The  
Ocean Ranch Substation Project. (Vol. I of II)

Application 16-07-016  
(Filed July 27, 2016)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING, IN PART,  
APPLICANT'S MOTION FOR LEAVE TO SUBMIT CONFIDENTIAL  
MATERIALS UNDER SEAL AS TO APPENDIX J CULTURAL RESOURCES  
REPORTS AND DENYING APPLICANT'S MOTION AS TO APPENDIX K  
GEOGRAPHIC INFORMATION SYSTEM DATA WITHOUT PREJUDICE**

On July 27, 2016, San Diego Gas & Electric Company (SDG&E) filed this application for a Permit to Construct (PTC) the Ocean Ranch Substation Project (the Proposed Project). On the same date, July 27, 2016, SDG&E also filed a motion for leave to submit confidential materials under seal (Motion) pursuant to Rule 11.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, General Order (GO) 66-C and Decision (D.) 06-06-066. SDG&E submitted a public version of the Proponent's Environmental Assessment (PEA) and a confidential version of the PEA. The Motion identifies portions of Chapters 1 and 4 of the PEA, consisting of Appendix J: Cultural Resource Reports, and Appendix K: Geographic Information System (GIS) Data. The applicant provided a proposed order with the above-referenced motion.

### **Authorities Cited**

The Applicant cites to Public Utilities (Pub. Util.) Code Section 583,<sup>1</sup> GO 66-C, Decision (D.) 06-06-066, and Resolution L-436 as authority for granting its motion for leave to file under seal.

Although utilities filing documents with the Commission routinely invoke Pub. Util. Code § 583, GO 66-C, and D.06-06-066 as authority for filing under seal in the course of our proceedings; these references are not blanket authorities for a determination of confidentiality. Section 583 prohibits Commission staff from publicly disclosing information furnished to the Commission by a public utility, and provides that any present or former officer or employee of the Commission who divulges any such information is guilty of a misdemeanor. This statute does not identify any information as “confidential” or distinguish between confidential and non-confidential information.

Similarly, GO 66-C governs public disclosure of public records of the Commission pursuant to the Public Records Act (Govt. Code § 6250 et seq.) and identifies which public records are and are not open to public inspection. For example, the Public Records Act does not affect the status of judicial records or the rights of litigants, including parties to administrative proceedings.<sup>2</sup> While GO 66-C identifies information that is not subject to public disclosure under the Public Records Act, it may inform us in our consideration of motions for confidential treatment of documents and information in our hearings and proceedings, however it is not controlling. Resolution L-436 addresses disclosure of safety related records in the context of the Public Records Act, discussing

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

<sup>2</sup> Govt. Code § 6260.

application of GO 66-C as it applies to the disclosure of safety related records and what information should be deferred to the formal proceeding that resulted in D.16-08-024 discussed below.

Finally, D.06-06-066, implementing Pub. Util. Code § 454.5(g), relates to “the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan.”<sup>3</sup> While SDG&E is an electrical corporation, this information is being submitted in support of an application for a PTC, specifically the California Environmental Quality Act (CEQA) review required for granting a PTC, not a procurement plan.

#### **Appendix K: Geographic Information System Data**

While some of the information filed with the motion to file under seal may be deserving of confidential treatment, the motion as pertaining to GIS information set forth in portions of chapters 1 and 4, and Appendix K is over-broad and does not specifically address the interest and need for protecting the GIS data, nor does the motion address how the legal authority cited supports designating the information confidential. SDG&E should be given another opportunity to clarify its motion to identify the specific documents or portions thereof for which it requests confidential treatment, and the specific legal authority supporting the motion.

SDG&E submitted GIS layers as “Appendix K” to its PEA. SDG&E marked this data as “confidential.” However, the Commission must grant public access to documents and data that will be relied on in both the CEQA process

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<sup>3</sup> Pub. Util. Code § 454.5(g)

and proceedings before the Commission, unless the Commission can make findings that support the need for protecting such information. Withholding GIS data relevant to the analysis of the proposed project without a more specific basis for a designation of confidentiality runs counter to CEQA's goals of providing the public with accurate disclosure of the potential environmental impacts caused by the project, as well as the Commission's goals to ensure a fair and transparent decision-making process.

D.16-08-024 contains the requirements for submitting confidential data to the Commission. D.16-08-024 provides guidance when granting decisions on a motion for leave to file under seal, particularly where the proceeding includes determinations involving CEQA compliance. Pursuant to D.16-08-024, any documents for which the submitting party seeks confidential treatment must be marked as confidential, the basis for confidential treatment must be specified, and the request for confidentiality must be accompanied by a declaration signed by an officer or attorney of the requesting entity.<sup>4</sup> If SDG&E seeks confidentiality for portions of chapters 1 and 4 of the PEA, and Appendix K as to the GIS data, it must provide additional specificity about which information cannot be disclosed and the basis for such non-disclosure.

## **Appendix J: Cultural Resources**

SDG&E also requests leave to file under seal portions of chapters 1 and 4, and Appendix J pertaining to cultural resources information. Appendix J contains confidential cultural resources site information. Pursuant to Government Code §§ 6254.10 and 6254(r), all archaeological site records are

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<sup>4</sup> D. 16-08-024 at 17-18.

confidential, and available only to individuals and organizations meeting specific criteria.<sup>5</sup> The National Historic Preservation Act, 16 U.S.C. 470w-3 also provides guidance on issues concerning confidentiality of cultural resources. Confidential treatment of this information serves the public interest as disclosure could lead to removal or destruction of the identified resources.

SDG&E's request for confidential treatment of portions of chapters 1 and 4, and Appendix J of the PEA pertaining to cultural resources is granted until the Commission's final decision in this proceeding is no longer subject to judicial review. During that period Appendix J and references within the PEA to material set forth in Appendix J shall not be made accessible or disclosed to anyone other than the Commission staff and its consultants, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ designated as Law and Motion Judge. Additionally any party to the proceeding that enters into an appropriate non-disclosure agreement with SDG&E that is submitted to the assigned ALJ for approval shall have access to the information as needed. When this proceeding is no longer subject to judicial review, the Commission's Executive Director shall ensure that all copies of Appendix J and related references to the Cultural Resources information provided to the Commission are returned to SDG&E or destroyed.

**IT IS RULED that:**

1. Within 10 days of this ruling, San Diego Gas & Electric Company (SDG&E) shall file a supplemental motion for confidential treatment of Appendix K: Geographic Information System (GIS) Data, identifying the specific documents or

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<sup>5</sup> California Historical Resources Information System Rules of Operation Manual (Amended September 26, 2008) at 2, 4, 32.

portions thereof for which confidential treatment is requested, stating the specific interest requiring protection, the need for such protection, and citing relevant legal authority to support the motion.

2. The information set forth in Appendix K: Geographic Information System (GIS) Data filed by SDG&E on July 27, 2016, shall remain under seal temporarily, pending a ruling on the supplemental motion filed in response to this ruling.

3. SDG&E 's July 27, 2016 motion for leave to file under seal portions of chapters 1 and 4, and Appendix J of San Diego Gas & Electric Company's Proponent's Environmental Assessment pertaining to cultural resources reports is granted until the Commission's final decision in Application (A.) 16-07-016 is no longer subject to judicial review. During that period, the information shall not be made accessible or disclosed to anyone except the Commission staff and its consultants, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge, or parties to the proceeding that have entered into an approved non-disclosure agreement filed in this proceeding.

4. When the Commission's final decision in A.16-07-016 is no longer subject to judicial review, the Commission's Executive Director shall ensure that copies of portions of chapters 1 and 4, and Appendix J of the Proponent's Environmental Assessment pertaining to cultural resources provided to the Commission are returned to SDG&E or destroyed.

Dated October 31, 2016, at San Francisco, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Administrative Law Judge